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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/831,585	07/27/2001	Hans Biermaier	BHTH-5440	7039
7590	02/23/2005		EXAMINER	
Senniger Powers Leavitt & Roedel 16th Floor One Metropolitan Square St Louis, MO 63102			CHORBAJI, MONZER R	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 02/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/831,585	BIERMAIER, HANS	
	Examiner	Art Unit	
	MONZER R CHORBAJI	1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 02 December 2004.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 11 and 13-30 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 11 and 13-30 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 27 July 2001 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date
4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ .
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____.

DETAILED ACTION

This non-final action is in response to the amendment received on 12/02/2004

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 11, 13-14, 20-23 and 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Call et al (U.S.P.N. 6,623,603) in view of Gunn (U.S.P.N. 6,402,897) and further in view of Perry et al (U.S.P.N. 4,411,310).

With respect to claims 11 and 22, the Call reference discloses a device for the thermal purification of water (col.1, lines 19-22), which includes the following: a counterflow heat exchanger (in figure 6, the arrows refer to the direction of water flowing in opposite directions) with a conduit (for example, in figure 6, the conduit is equivalent to the preheater section and the condenser section that are in fluid communication with

each other. See also, figure 11, 211, 205 and 209) having a heating section (figure 6, preheater) and a cooling section (figure 6, condenser) that are both in fluid connection (for example, see figure 6 and the direction of the arrows); a liquid heating source arranged in the center (col.13, lines 27-33 and figure 11, 200) of the concentric device (being the individual walls in figure 11 that form concentric channels); both sections being concentrically arranged around the heating source (in figure 11, 211 and 209 are positioned in a spiral arrangement around a central heat source located at 200); a metallic conduit (col.5, lines 65-66. The word conduit is considered equivalent to a channel); individual windings of conduit lying one on the other (in figure 6, the cooling section is lying on the heating section) and contacting each other (in figure 6, the heating and the cooling section contact each other) and a device (the meaning is considered equivalent to a piece of equipment designed to serve or perform a special function) for allowing liquid flow only in a direction from the heating section to the cooling section (the device being, for example, a pump for pressurizing water to cause it to flow in one direction into the heating or preheater section 100, col.9, lines 64-67). With respect to claims 11 and 22, the Call reference fails to teach spiral arrangement of the device, using a check valve and using flexible material. The Gunn reference, which is in the art of water treatment, teaches that designing spiral heat exchangers (122) and using check valves (29) for allowing water to flow from the heating section (5) to the cooling section (13) are conventional. As a result, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of the Call reference by including a check valve as taught by the Gunn reference in order

to control the flow out of the heating section and to also prevent backflow of the heated water (col.6, lines 40-43).

However, with respect to claims 11 and 22, the Gunn reference fails to teach using flexible material. The Perry reference, which is in the art of designing heat exchangers, teaches building a heat exchanger apparatus with flexible sheets (col.4, lines 5-16). Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the spiral heat exchanger of the Gunn reference by building it with flexible expanding sheets as taught by the Perry reference (col.17, lines 25-29) in order for the heat exchanger to be used for large scale operations (col.1, lines 14-16).

With respect to claims 13-14 and 23, the Gunn reference teaches placing check valve (29) on the heating section for allowing water to flow from the heating section (5) to the cooling section (13).

With respect to claims 20-21 and 29-30, the Perry reference teaches using metal films (col.16, lines 57-59) and plastic films (col.17, lines 26-27).

4. Claims 15-16 and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Call et al (U.S.P.N. 6,623,603) in view of Gunn (U.S.P.N. 6,402,897) and further in view of Perry et al (U.S.P.N. 4,411,310) and Hakim-Elahi (U.S.P.N. 5,251,689).

With respect to claims 15-16 and 24-25, the Call reference, the Gunn reference and the Perry reference all fail to teach the concept of using elastic materials in building heat exchangers; however, the Hakim-Elahi reference teaches the use of elastic

materials in the art of designing heat exchangers. As a result, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the heat exchanger of the Call reference by including elastic material as taught by the Hakim-Elahi reference in order to allow coiling of the heat exchanger (abstract, lines 5-6).

5. Claims 17-19 and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Call et al (U.S.P.N. 6,623,603) in view of Gunn (U.S.P.N. 6,402,897) and further in view of Perry et al (U.S.P.N. 4,411,310) and Suchomel et al (U.S.P.N. 5,687,678).

With respect to claims 17-19 and 26-28, the Call reference, the Gunn reference and the Perry reference all fail to teach the following: two individual conduits arranged coaxially one inside the other, individual windings lie in the same plane and individual windings arranged in a spherical form. The Suchomel reference, which is in the art of heating water by using spiral heat exchanger, teaches individual conduits arranged coaxially one inside the other (figure 3, 22, inner and outer tubings) and individual windings lie in the same plane (figure 3, two bottom tubings, 22, lie in the same plane). Further, the individual windings of the Suchomel reference are arranged in a cylindrical shape (figure 3, 22); however, choosing the shape of the heat exchanger coils is a matter of design choice that is within the scope of the artisan. Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the concentric conduits of the heat exchanger of the Call reference by the

spiral conduits since such a substitution is a matter of design choice as evidenced by the Suchomel reference.

Response to Arguments

6. Applicant's arguments with respect to claim 11 and 13-30 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Cleary (U.S.P.N. 5,326,537), Pennington (U.S.P.N. 5,787,974), Nilsson et al (U.S.P.N. 5,033,543) and Cisar et al (U.S.P.N. 6,555,055) references all teach similar concepts as the instant claims in water thermal treatment.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MONZER R CHORBAJI whose telephone number is (571) 272-1271. The examiner can normally be reached on M-F 6:30-3:00.

9. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ROBERT J WARDEN can be reached on (571) 272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1744

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Monzer R. Chorbaji *MRC*
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02/17/2005

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